

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 21-1722

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on June 28, 2021, on the application of **PATRICK C.**

BEARD and **ANNA L. BEARD** (the “Applicants”). The Applicants are requesting approval of one Critical Area Variance for encroachment within the 100-foot Shoreline Development Buffer to a distance of 50 feet, and one non-Critical Area variance to encroach within the 50-foot front-yard setback, to a distance of 25 feet, for the purpose of constructing a 24-foot by 24-foot garage. The Applicants’ proposal calls for the garage to be located over a portion of the existing driveway to be removed; an existing shed will also be removed, resulting in a net decrease in lot coverage of 244 square feet.

The subject property (the “Property”) is an approximately 1.078-acre, waterfront residential parcel, situated within the Critical Area, owned by the Applicants and located in the Woodland Farms Subdivision at 7871 Avon Court, Easton, Maryland 21601. It is shown on tax map 34, grid 14 as parcel 283, lot 47, and its zoning classification is Rural Residential within the Critical Area Overlay District. The Property is improved by a two-story, single-family dwelling built around 1982 and contains a shed, existing patio/deck areas and a paved driveway. The Property is located within the Critical Area with a 15 percent lot coverage allowance, a 50-foot front-yard setback and 25-foot side- and rear-yard setbacks, and a 100-foot Shoreline Development Buffer (the “Buffer”).

The Property is bound to the north by an improved property known as 7885 Avon Court, Lot 46, and the South Fork of the Tred Avon River. It is bound to the south by an improved

property known as 7857 Avon Court, Lot 48, to the east by the South Fork of the Tred Avon River, and to the west by Avon Court and additional residential lots within the Woodland Farms Subdivision.

Applicants received a certificate of nonconformity on March 4, 2021 for the portions of the dwelling, deck, walkways and patio located within the 100-foot Buffer (R-21-007).

Applicants' request is made in accordance with Chapter 190 Zoning, Article VII §190-58.3, §190-58.4; Article III, §190-15; and Article II, §190-9.1 of the *Talbot County Code* (the "Code"). Relevant Critical Area provisions are included in Title 8, Subtitle 18 of the Natural Resources Article of the *Maryland Annotated Code* (the "Critical Area Program") and COMAR Title 27.

Present at the hearing were Board of Appeals members Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; Louis Dorsey, Paul Shortall and Zakary Krebeck. The Applicants attended the hearing with counsel, Bruce Armistead, Esq. of Armistead, Lee, Rust & Wright, P.A., 114 Bay Street Building C, Easton MD 21601. Elisa DeFlaux, Planner II, and Brennan Tarleton, Assistant Planning Officer, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the "Board"). Two members of the public were present. It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for a Critical Area Variance and a Non-Critical Area Variance with Applicants' narrative as Attachment A.
2. Tax Map with subject property highlighted.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.

4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for Critical Area Variance with Applicants' responses as Attachment B.
7. Standards for Non-Critical Area Variance with Applicants' responses as Attachment C.
8. Staff Report prepared by Elisa DeFlaux, Planner II.
9. Sign Maintenance Agreement/Sign Affidavit.
10. Letter dated June 15, 2021 from Jennifer Esposito, Natural Resources Planner, Critical Area Commission.
11. Authorization letter from Applicants.
12. Disclosure and Acknowledgment Form.
13. Aerial Photos.
14. Covenants of Woodland Farms Subdivision.
15. Floor plan.
16. Elevation plan.
17. Site Plan of the Property dated April 22, 2021, prepared by Fink, Whitten & Associates, LLC.
18. Letter from J. Everngam, dated June 10, 2021.
19. Email from Anne M. Morse, Maryland Department of Health, to Zach Smith, Esq., Armistead, Lee, Rust & Wright, P.A., dated June 10, 2021, 9:47 a.m.

The Applicants were sworn in. Mr. Armistead presented the Application on behalf of the Applicants. He said the Applicants faced unusual circumstances and described the Property as an unusual lot of just over an acre but notably narrow throughout, purchased by the Applicants in

December, 2020. “I am surprised it was approved” when the Woodland Farms Subdivision was created by plat in 1978, Mr. Armistead said. Due to its narrow configuration, Mr. Armistead said, most of the Property is within the Buffer abutting the South Branch of the Tred Avon River, greatly limiting its flexibility. The lot comprising the Property was created prior to the establishment of the Critical Area Program and enactment of Critical Area law. The Applicants, he said, are currently living in Easton Village while renovating the Property, and hope to have what he described as a “normal, customary amenity” – a two-car garage – to house vehicles and also, in part, because the dwelling has no basement and the Applicants desire storage space. Homes in the surrounding area, Mr. Armistead said, almost all have two-car garages. By eliminating an existing 210-square-foot shed and locating the proposed garage partially atop an existing parking pad, Mr. Armistead said, the Property will enjoy a reduction of impervious lot coverage of approximately 244 square feet.

The proposed garage will be set back from Mean High Water (“MHW”) by approximately 50 feet and from the front property line by approximately 25 feet, Mr. Armistead said. The proposed location for the garage is a “logical place” for such a structure, he added.

In response to questions from Mr. Armistead regarding the criteria for both the Critical Area and Non-Critical Area variance requests, Applicant Patrick Beard testified in support of the Application. Mr. Beard said the dimensions of the proposed garage were the minimum size for a two-car garage, and that the Applicants did not create the circumstances leading to the need for variances; rather, the unusual dimensions of the Property were set in the 1970s when the Woodland Farm Subdivision was created. Mr. Beard said none of the proposed modifications are intended to enhance profitability of the Property; rather, they are for the Applicants’ personal

use. He said construction of the proposed garage will not be a detriment to neighboring properties, most of which have similar garages.

Mr. Beard said minor vegetation will be removed in the area the garage will be built, and that if the variance requests are approved, the Applicants will install extensive plantings and landscaping.

Elizabeth Fink, Principal Partner and Land Planner of Fink, Whitten & Associates, LLC, 113 E. Dover St., Unit C, Easton, MD 21601, testified on behalf of the Application. Ms. Fink said the only buildable envelope on the Property is a small area its south side where an existing septic system, outside the platted Sewage Disposal Area (“SDA”) approved in 1978, prevents the construction of a garage. Ms. Fink said she contacted the Health Department inquiring about the viability of the platted SDA, which was not utilized as it is entirely within the 100-foot Buffer. Ms. Fink said she was told that the platted SDA was not viable, but that a viable area exists entirely outside the Buffer to replace the existing septic system should it fail. The Health Department, Ms. Fink said, did not object to the fact that the proposed garage encroaches slightly on the platted SDA.

Mr. Armistead addressed the Critical Area Commission’s comments in Board Exhibit 10 on whether locating the garage on the opposite side of the Property’s driveway would have fewer impacts on existing vegetation. He said the Applicants would confirm that locating the garage as planned would involve no more removal of vegetation than locating it on the south side of the driveway, and the latter location would represent more net impervious lot coverage than its planned site.

In response to a question from the Board, Mr. Beard confirmed that a tree directly next to the existing shed will remain undisturbed. Mr. Cavanaugh said the Application was reasonable

and will result in a reduction in net impervious lot coverage. Mr. Dorsey agreed. Mr. Jones said the Applicants are simply replacing a shed with a more functional garage and moving it away from the water. He said the reduced impervious coverage and enhanced vegetation for runoff make this a “rare” application.

The Board made the following findings of fact and conclusions of law:

1. All legal requirements pertaining to a public meeting were met.

CRITICAL AREA VARIANCE

2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this chapter would result in unwarranted hardship. The Property was created in the late 1970s with the residential dwelling being constructed in 1982, per the State Department of Assessments and Taxation (“SDAT”). The Property is 180-feet deep at its widest point with a 100-foot Buffer along the eastern side of the property and a 50-foot setback along the western (front) property line, resulting in a very constrained building envelope. The existing dwelling was constructed prior to the enactment of Critical Area law requiring a 100-foot Buffer; the setbacks at the time of construction were 50-feet from MHW. Based on the plans provided by Fink Whitten & Associates, LLC, the only remaining area within the building envelope contains trees and existing septic components for the residence.
3. A literal interpretation of the Critical Area requirements will deprive the property owner of rights commonly enjoyed by other property owners in the same zoning district. Many of the lots in the Woodland Farms Subdivision are approximately the same size, on the waterfront and have accessory structures or attached

garages. The configuration of the Property, coupled with the required front-yard and Buffer setbacks, make the Property almost unbuildable by today's standards without obtaining variances. The existing dwelling was constructed in 1982 according to SDAT records – seven years prior to the establishment of the Critical Area Program.

4. The granting of a variance will not confer upon the property owner any special privilege that would be denied by this chapter to other owners of lands or structures within the same zoning district. Applicants have stated that the purpose of this garage is to allow for safe storage of their vehicles and other possessions. Many of the dwellings within this subdivision include accessory structures or attached garages that serve a similar purpose. Due to the lot configuration and the required setbacks, Applicants would not be able to construct an accessory structure for this purpose without first obtaining a variance.
5. The variance request is not based on conditions or circumstances which are the result of actions by the Applicants, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property. The residence was built in 1982, prior to the establishment of the Critical Area Program, and purchased by the Applicants in its current configuration in December, 2020. The variance request is based on site constraints and is not the result of any actions by the Applicants.
6. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in

harmony with the general spirit and intent of the state Critical Area law and the Critical Area Program. The proposed garage will not result in the removal of any trees or negatively affect any environmentally sensitive areas on the Property. As stated by the Applicants, with the removal of the existing shed and the proposed construction over a portion of existing driveway, the garage would result in a reduction of lot coverage within the 100-foot Buffer of 244 square feet.

Additionally, the Applicants have proposed stormwater management practices in accord with the current regulations.

7. The variance shall not exceed the minimum adjustment necessary to relieve the unwarranted hardship. The proposed construction does not exceed the minimum adjustment necessary to relieve the unwarranted hardship. The construction of the 24-foot by 24-foot garage would allow for the Applicants to retain adequate storage space on the Property for their belongings while also providing a net decrease in lot coverage within the 100-foot Buffer.
8. If the need for a variance to a Critical Area provision is due partially or entirely because the lot is a legal nonconforming lot that does not meet current area, width or location standards, the variance should not be granted if the nonconformity could be reduced or eliminated by combining the lot, in whole or in part, with an adjoining lot in common ownership. This section is not applicable.

NON-CRITICAL AREA VARIANCE

9. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement

of the provisions of this chapter would result in practical difficulty or unreasonable hardship in enabling the applicant to develop or use the property. As stated previously, the Property was created in the late 1970s with the residential dwelling being constructed in 1982, per SDAT. The lot is 180 feet deep at its widest point, with a 100-foot Buffer along the eastern side of the Property and a 50-foot setback along the western (front) property line, resulting in a very constrained building envelope. The existing dwelling was constructed prior to the enactment of Critical Area law requiring a 100-foot Buffer; the setbacks at the time of construction were 50-feet from MHW. If the Applicants were to propose a structure location outside of the 50-foot front yard setback, then additional encroachment into the Buffer would be necessary, thus intensifying the request of the Critical Area variance. The proposed location of the garage is shown on the site plan to be located overtop of a platted SDA on the property. Based on the Applicants' email correspondence with Anne Morse, Director of the Environmental Health Department, it was confirmed that the current septic system was actually installed to the south of the existing dwelling, outside of the 100-foot Buffer. She also noted that there is adequate space remaining on the property to replace the existing septic without utilizing the platted SDA area shown on the site plan within the 100-foot Buffer.

10. The need for the variance is not based upon circumstances which are self-created or self-imposed. Applicants just recently purchased the property and have not taken any actions resulting in the need for the variance being requested.

11. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. The request is not based upon greater profitability or lack of knowledge of restrictions. Applicants have stated that the garage is for personal use, to allow for adequate storage of their vehicles and personal belonging on the Property.
12. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. Applicants state that detached garages are customary in residential neighborhoods. The granting of the variance of the 50-foot front setback will not be contrary to the public interest or neighboring properties. The proposed garage is centrally located on the parcel and approximately 150 feet from the both side property lines. The lot contains mature vegetation, and will be sufficiently screened under the current conditions from neighboring properties.
13. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Staff believes the request is the minimum necessary to allow the Applicants to construct the proposed garage. Alternate locations are occupied by mature vegetation, the Critical Area Buffer or existing septic components. The proposed configuration allows for the retention of existing vegetation and a net reduction in lot coverage; while allowing for the garage to be located within a reasonable distance of the Applicants' dwelling and limiting encroachment on neighboring property owners.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,


RESOLVED, that the Applicants, **PATRICK BEARD** and **ANNA BEARD** (Appeal No. 21-1722) are **GRANTED** the requested variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. Applicants shall remove the existing shed and portion of the existing driveway as shown on the site plan provided with the Application, admitted as Board Exhibit 17, prior to receiving final building permit approval for the garage.
2. Applicants shall make applications to the Office of Permits and Inspections, and follow all of the rules, procedures and construction timelines as outlined regarding new construction.
3. Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals' approval.

GIVEN OVER OUR HANDS, this 4th day of August, 2021.

TALBOT COUNTY BOARD OF APPEALS


Phillip Jones, Chairman


Frank Cavanaugh, Vice-Chairman

Unavailable for Signature
Louis Dorsey, Member


Paul Shortall, Member


Zakary Krebeck, Member